appears to me that the number and nature of the loans made by the plaintiff show no greater system or continuity than in the case of *Newton v. Pyke* where it was held that the plaintiff was not a moneylender within the meaning of the Act. This decision was not cited at the hearing but seems to me to be more in point than the other decisions mentioned above. Following the decision in that case I hold that, although *prima facie* on the pleadings the plaintiff is a moneylender, yet he has proved the contrary to my satisfaction and is not a moneylender.

This being so, the plaintiff is entitled to recover the amount of the loans; but as the interest on the loan of $5,000 slightly exceeds the rate of 20 per cent per annum which is the maximum permitted by section 10(4) of the Ordinance, his claim must be reduced to this extent.

Subject to this reduction there will be judgment for the plaintiff with costs.

Order accordingly.

WILKINS AND OTHERS
v.
KANNAMMAL (f) AND ANOR.

[Court of Appeal (Foster Sutton, C.J., Taylor and Wilson, JJ.) May 5, 1951]

[K. L. — Civil Appeal No. 9 of 1951]

The Torrens law is a system of Conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so far as necessary to achieve its own special objects.

COURT OF APPEAL.

S. M. Sharma for the appellants.

S. N. Veerasamy and *M. S. Mahendran* for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — These appeals were decided orally, and unanimously, the Chief Justice adding that the grounds of judgment would be given later in writing.

This litigation arises out of the affairs of one Charles Wilkins who died in India in 1945. Some time before the war it was arranged that he should take up land at the Cameron Highlands and develop it as a family estate. His two sons, who were abroad, were to contribute money as and when they could, to assist in the development and his wife was to have a share. This plan was carried out and a tea-garden called Forest Flower Estate gradually came into existence. The titles to the land were registered in the name of Charles Wilkins. The household included an orphan named Kannammal who had been brought up as a member of the family, though not legally adopted, and was on affectionate terms with Mrs. Wilkins. In April 1941 Wilkins transferred the titles into the name of Kannammal as trustee. At this time Mrs. Wilkins was living permanently in India and the two sons were in different places in Africa. About the middle of 1942 Wilkins was interned by the Japanese. He informed his brother, John Wilkins, of the transfer and stated that he had given to Kannammal a letter explaining the trust. His health deteriorated and shortly after the Liberation he died. In 1946 John Wilkins went to the estate and after some time Kannammal produced a document bearing Charles Wilkins' signature which she said was the trust letter. The effect of this document was to make the transfer to Kannammal a transfer of the beneficial interest in the whole of the estate which was unencumbered. She explained that the words "as trustee" had been inserted merely for her protection and not with the intention of making her a trustee. This document was expressed in language completely inconsistent with the view that it could have been composed by the deceased, of whose writings ample specimens were available. The signature was written at a curious angle and there was evidence that the deceased had a habit of signing blank papers in idle moments. The widow and sons sued Kannammal as the registered proprietress for a declaration that she was a trustee for them and the legal personal representative of the deceased in equal shares.

The trial Judge held that the letter mentioned was in fact a forgery and in the opinion of this Court the evidence amply justifies that finding. He also said : — "the immediate cause of the transfer was, no doubt, the fear of the deceased that the property would be confiscated by the Japanese" (on the view that they were more likely to confiscate the property if it were in his name than if it were in Kannammal's). Later in his judgment, however, he expressed the view that Wilkins wished to make some provision for Kannammal but not to the exclusion of his wife and sons and he ended by making a declaration that she held the whole estate in trust for herself and the three plaintiffs in equal shares. The plaintiffs appealed. Kannammal cross appealed on the grounds that there was no enforceable trust in favour of the wife and sons, that the letter was genuine and that the whole of the estate belonged to her.

The trial Judge found that the estate was acquired in accordance with the family arrangement. He did not expressly so decide but it followed by necessary implication from the finding that Charles Wilkins held the land as a trustee for himself, his wife and his two sons in equal shares.

The trial Judge appears to have thought that the transfer to Kannammal was made during the Japanese war. In point of fact the transfer was made some eight months before the Japanese entered the war. While, therefore, it is possible that some precaution against the misfortune of war may have been in Wilkin's mind, the matter is open to doubt. The fact that he gave a letter to Kannammal at that time is consistent with the view that he wished to make some provision for her but there is no evidence of any specific intention to give her a share of this property, still less the whole of his own share, and if he ever formed such an intention it wholly failed for want of evidence.

It was argued that the original trust was unenforceable because no caveat was ever entered. This doctrine does not apply to a case such as the present one where the whole transaction was between members of the same family and household so that everyone concerned is necessarily taken to know the material facts. The Torrens law is a system of conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so far as is necessary to achieve its own special objects. Wilkins was a trustee, as Kannammal knew. He alone could not alter the trust. He had no disposing power except over his own quarter share. The transfer to Kannammal therefore constituted her a trustee in his place. In the absence of any evidence that he exercised his disposing power she holds his share for his legal personal representative and the other three shares for the widow and sons and she must make registrable transfers accordingly as they direct. For these reasons the appeal was allowed with costs and the cross-appeal dismissed with costs.

Foster Sutton, C.J. : — I concur.

Wilson, J. : — I concur.

Appeal allowed.

THE PLANTERS' LOANS BOARD
v.
S. MANGALAM.

[Orig. Civ. Juris. (Wilson, J.) April 7, 1951]

[K. L. — Originating Summons No. 214 of 1950]

Planters' Loans Board — Whether debt owed to the Board is debt owed to the Government — Occupied territory — Powers of the occupying Government — Debtor and Creditor (Occupation Period) Ordinance — Interpretation and General Clauses Ordinance No. 7 of 1948, s. 35.

The plaintiff in this case called upon the defendant to show cause why a certain piece of land in the District of Kuala Lumpur should not be sold by public auction for the recovery of all principal moneys, charges expenses, fees, interest and costs due to the plaintiff in respect of two charges.

The defendant borrowed two sums of money amounting to $25,000 in 1940 and in 1941 on two charges on a piece of land. On August 17, 1945, the defendant paid $31,189.52 to the Custodian of Enemy Property and the land was discharged. The plaintiff claimed the loan and asked why the land should not be sold by public auction for the recovery of the loan.

There were three issues for the decision of the Court: (1) Whether the debts owed by the defendant were debts owed to the Government of the Federated Malay States (2) Whether the payment of $31,189.52 in occupation currency made by the defendant to the Japanese Custodian of the property of the plaintiff and apart from any statutory Enactment brought into force after the 31st March 1946, a good and valid payment of the whole of the debts owed by the defendant; and (3) Whether the said payment of $31,189.52 in occupation currency made by the defendant as aforesaid falls to be revalued under the provisions of the Debtor and Creditor (Occupation Period) Ordinance 1948.

Held, (1) that when a loan under the Planters' Loans Fund Enactment is granted, it is a loan by the Government to the individual to whom it is granted and the Board, in its control and management of the fund is a servant or agent of the Government (2) that the Japanese authorities during the period of the occupation had the power and the duty of administering the Government of the territory, not only in the interests of themselves but also of the inhabitants so far as is consistent with their own safety and (3) that the Government of the F.M.S. is bound by the provisions of any general enactment of law effective in the Federation unless expressly exempted.

Case referred to :—

(1) *Tamlin v. Hannaford* (1950) 1 K.B. 18.

ORIGINATING SUMMONS.

F. G. Charlesworth for the plaintiff.

W. G. W. Hastings for the defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — This is an Originating Summons under which the Planters' Loans Board require Madam S. Mangalam, the defendant, to show cause why a certain piece of land in the District of Kuala Lumpur